

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
)	Chapter 11
EXIDE TECHNOLOGIES, et al., ^{1/})	
)	Case No.: 02-11125 (KJC)
Reorganized Debtors.)	Jointly Administered
)	
)	

**STIPULATION BETWEEN THE UNITED STATES AND EXIDE
TECHNOLOGIES REGARDING MAGIC MARKER SITE
AND PROOF OF CLAIM**

1. This stipulation (the "United States - Exide Stipulation") is entered into by the United States and Exide Technologies ("Exide") to resolve and settle certain claims of the United States with respect to the Magic Marker/Gould Battery Superfund Site ("Site"), in Trenton, Mercer County, New Jersey.

2. On April 22, 2003, the United States filed a proof of claim (designated claim no. 3446) and a supplemental proof of claim (designated claim no. 6257) in this matter (together, the "Proof of Claim"). The Proof of Claim was filed with respect to the alleged liabilities of Exide under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*, in connection with, *inter alia*, the Site.

3. The Proof of Claim alleged that Exide "is liable to the United States under CERCLA in connection with" the Site, and alleged that "[u]nder Section 107(a) of CERCLA, 42 U.S.C.

^{1/} The Reorganized Debtors in these proceedings are: Exide Technologies f/k/a Exide Corporation; Exide Delaware, L.L.C.; Exide Illinois, Inc.; RBD Liquidation, L.L.C.; Dixie Metals Company; and Refined Metals Corporation.

§ 9607(a), Exide is liable to reimburse the United States for all response costs incurred and to be incurred by EPA in connection with [the Site] . . . plus statutory prejudgment interest on such costs.”

4. On or about the date of this Stipulation, the United States, on behalf of the United States Environmental Protection Agency, lodged or will lodge a Consent Decree in the United States District Court of New Jersey resolving claims between the United States, on behalf of the United States Environmental Protection Agency, and a third party, Gould Electronics Inc. (“Gould”), relating to the Site (the “United States - Gould Consent Decree”). Pursuant to the United States - Gould Consent Decree, the United States will receive reimbursement of certain response costs incurred by the United States at the Site. The United States is entering into this Stipulation with Exide in reliance on the terms of the United States - Gould Consent Decree.

5. Gould has also filed a proof of claim in Exide’s above-captioned bankruptcy case seeking, *inter alia*, contribution from Exide for payments made or to be made by Gould to the United States regarding the Site. Gould and Exide have entered or will enter into a stipulation (the “Gould - Exide Stipulation”) under which Gould will be allowed a general, unsecured, non-priority claim in an agreed amount, in return for which the portion of Gould’s proof of claim arising from the United States’ past response costs at the Site will be deemed resolved and satisfied. Exide is entering into this Stipulation with the United States in reliance on the terms of the Gould - Exide Stipulation.

6. The Parties have held discussions to resolve their disputes and the Proof of Claim and have agreed to the terms set forth below.

A. In light of the agreements set forth in the United States - Gould Consent Decree and the Gould - Exide Stipulation, and effective only upon the receipt by the United States of full payment pursuant to the United States - Gould Consent Decree, the United States shall be deemed to have withdrawn with prejudice that portion of its Proof of Claim that seeks the reimbursement of response costs in connection with the Site pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607.

B. In the event that the Consent Decree between the United States and Gould is not entered by the United States District Court for the District of New Jersey, or the entry is reversed on appeal, or the United States does not receive full payment as required by the United States - Gould Consent Decree, this Stipulation shall be null and void and have no effect. In that event, this Stipulation will not (a) constitute a waiver or release of any claims by or against any party, (b) prejudice in any manner the rights of any party, or (c) constitute an admission of any sort by any party.

C. This Stipulation shall have no effect on any aspect of the Proof of Claim other than as stated in Paragraph A hereof.

D. Unless this Stipulation becomes null and void pursuant to Paragraph B or otherwise, Exide covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Stipulation, including but not limited to:

i. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C.

§§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

ii. any claim arising out of the response actions at the Site for which response costs were incurred, including any claim under the United States Constitution, the Constitution of the State of New Jersey, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

iii. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to response costs at the Site.

E. This Stipulation may be executed in counterparts, any of which may be transmitted by facsimile, and each of which shall be deemed an original, but all of which together shall constitute one instrument.

F. This Stipulation is without admission of any fact or liability by any party hereto, nor may it be used as evidence in any proceeding except to enforce the terms hereof. Other than as set forth herein, the United States and Exide reserve all rights and defenses.

G. The Court shall retain jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation.

Respectfully submitted,

FOR THE UNITED STATES:

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